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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,755	12/28/2001	David Harriman	42390.P13766	3565
7590	03/30/2004			EXAMINER
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP Seventh Floor 12400 Wilshire Boulevard Los Angeles, CA 90025-1026			PHILPOTT, JUSTIN M	
			ART UNIT	PAPER NUMBER
			2665	11
DATE MAILED: 03/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/040,755	HARRIMAN, DAVID
	<b>Examiner</b>	<b>Art Unit</b>
	Justin M Philpott	2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 08 January 2004.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1,3,5,6,8,10,11,13 and 15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3,5,6,8,10,11,13 and 15 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, filed January 8, 2004 with respect to the newly amended claims 1, 6 and 11 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3, 5, 8, 10, 13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claim 3 recites the apparatus of claim 2, claim 5 recites the apparatus of claim 4, claim 8 recites the apparatus of claim 7, claim 10 recites the apparatus of claim 9, claim 13 recites the system of claim 12, and claim 15 recites the system of claim 14. However, claims 2, 4, 7, 9, 12 and 14 have been canceled by applicant in the Amendment filed January 8, 2004. Thus, claims 3, 5, 8, 10, 13 and 15 depend upon canceled claims. Therefore, there is insufficient antecedent basis for the limitations in these claims.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3, 5, 6, 8, 10, 11, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,515,967 to Wei et al.

Regarding claims 1, 6 and 11, Wei teaches an apparatus comprising a data path output unit to output a packet header for a message request transaction with the packet header including: a format field (e.g., combination of 601 and 615 in FIG. 6) to indicate the packet header (e.g., version 601) and further to specify whether the packet is to include data (e.g., MRM message length 615 indicates the length of the message area 511 comprising data, or the amount of data, which implicitly indicates whether the message area includes any data), a subset of a type field (e.g., at least one bit of type 603) to indicate a message request transaction (e.g., see col. 7, lines 38-45), and a message group sub-field (e.g., within MRM sequence number 625) separate from the format field (e.g., combination of 601 and 615) and separate from the type field (e.g., at least one bit of type 603) to indicate one of a plurality of message groups (e.g., see col. 8, lines 8-35 wherein the sequence number corresponds to a specific one of a plurality of message groups G1, G2, etc.).

Further, while Wei may not specifically disclose the format field indicates the length of the packet header, Wei further discloses the format field (e.g., by version 601) specifies the version of the header (e.g., see col. 7, lines 15-38). That is, while Wei teaches a preferable embodiment of a header comprises a standard MRM protocol having five 32-bit words, additionally, Wei discloses that the header 509 may follow other protocols (e.g., see col. 7, lines 19-20), whereby the version 601 would indicate a specific protocol implicitly having a specific length. Still further, Wei teaches that a field 613 comprises bits which may or may not be used

(e.g., see col. 7, lines 55-57) and a field 619 is used to describe the length of a message in another field 613 within the packet header (e.g., see col. 8, lines 1-3), implying that headers of varied size may be utilized. Thus, Wei clearly implies that the format field (e.g., by version 601) indicates the length of the packet header by teaching that the header 509 may follow other protocols, implicitly having specific lengths, whereby the version 601 determines which protocol the header follows, and further by disclosing header fields may or may not be used and that the length of messages in the header may vary (e.g., see col. 7, line 55 – col. 8, line 3).

Regarding claims 3, 8 and 13, Wei teaches the packet header includes a message code field (e.g., code 605).

Regarding claims 5, 10 and 15, Wei teaches the message group sub-field (e.g., within MRM sequence number 625) includes bit(s) of: a type field (e.g., see col. 8, lines 9-15 regarding identifying the MRM message comprising sender/receiver requests, etc.), and an extended type field (e.g., see col. 8, lines 24-27 regarding the sequence number identifying specifically which “request” is responsible). While Wei may not specifically disclose the message group sub-field is exactly three-bits comprising one bit from the type field and two bits from the extended type field, it is generally considered to be within the ordinary skill in the art to adjust, vary, select or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on Appellant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1955); In re Saether, 492 F.2d 849, 181 USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205

USPQ 215 (CCPA 1980). Thus, at the time of the invention it would have been obvious to one of ordinary skill in the art to construct the message group sub-field with three-bits comprising one bit from the type field and two bits from the extended type field since it is generally considered to be within the ordinary skill in the art to adjust, vary, select or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value.

*Conclusion*

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M Philpott whose telephone number is 703.305.7357. The examiner can normally be reached on M-F, 9:00am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D Vu can be reached on 703.308.6602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Justin M Philpott



HUY D. VU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600